



Council Meeting: September 1, 2009

SUBJECT: Request for Authorization by Resolution for the City Manager to Execute a Maintenance Agreement for the Borregas Avenue Bicycle/ Pedestrian Bridges

REPORT IN BRIEF

The recently completed Borregas Avenue Bicycle and Pedestrian Over-crossing project provides a more safe and convenient bicycle and pedestrian access between central Sunnyvale (residential areas and Caltrain) and north Sunnyvale (major employment area and light rail), along the north-south Borregas corridor. The project consists of constructing two bicycle and pedestrian overcrossings of Highway 101 and State Route 237.

At this time, staff from the California Department of Transportation and the City have drafted a maintenance agreement (Attachment A). This agreement is required to establish maintenance responsibilities for City owned facilities over the State Highway System. The Cooperative Agreement assures the State that the City will conduct maintenance and repairs as necessary, and establishes procedures for determining and executing repairs.

Staff recommends that the City Council approve the attached resolution (Attachment B) and authorize the City Manager to execute the agreement. Caltrans requires an accompanying resolution to the signed agreement.

BACKGROUND

In September 1998, the City completed a feasibility study of the construction of two new bicycle/pedestrian bridges over Routes 101 and 237 in a Borregas Avenue alignment. These bridges would create a new alternative transportation corridor between central Sunnyvale and the Moffett Industrial Park. In accepting the study, the City Council directed staff to continue planning for these bridges. The City secured several grants for preliminary engineering, environmental reporting, and construction of these bridges. The project was granted outside funding from various sources as part of the Santa Clara County Valley Transportation Authority's (VTA) Bicycle Expenditure Program. Staff has been coordinating the design, environmental, community outreach, grants management State approval process, and construction of this project for the last several years. The project is now 100% complete.

EXISTING POLICY

Land Use and Transportation Element: Goal C3-Attain a transportation system that is effective, safe, pleasant, and convenient.

Land Use and Transportation Element: C3.5.1 Promote alternate modes of travel to the automobile.

Land Use and Transportation Element: C3.5.4 Maximize the provision of bicycle and pedestrian facilities

Land Use and Transportation Element R1.2, Support coordinated regional transportation system planning and improvements.

DISCUSSION

The Borregas Bicycle/Pedestrian Bridges project is complete and in operation. A Maintenance Agreement must be executed between Caltrans and the City to establish maintenance responsibilities and procedures. Caltrans requires a resolution by the City's governing board authorizing execution of the agreement.

Upon execution of the Maintenance Agreement, Caltrans will conduct bi-annual inspections, and identify any necessary repairs. The City will be responsible for making any identified major repairs. City forces will conduct regular day to day maintenance such as debris and litter pick-up, graffiti removal and lighting replacement.

FISCAL IMPACT

There is no fiscal impact associated with execution of this Maintenance Agreement. Routine bridge maintenance is funded under existing operating budgets. There may be a future fiscal impact should any significant structural repairs be identified. These would be brought before Council for approval.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Approve the attached resolution (Attachment B) authorizing the City Manager to execute the Maintenance Agreement for the Borregas

Bicycle/Pedestrian Bridges project with the California Department of Transportation.

2. Elect not to authorize the City Manager to execute the Cooperative Agreement.

RECOMMENDATION

Staff recommends Alternative No. 1: Approve the attached resolution and authorize the city manager to execute the Maintenance Agreement for the Borregas Bicycle/Pedestrian Bridges project with the California Department of Transportation.

The Cooperative Agreement lays out an understanding of roles and responsibilities between the City and Caltrans for maintenance of the bridges. This project is a City constructed project that is partially within the State right of way, where the bridges cross Highways 101 and 237, so a Maintenance Agreement is required to clarify City and Caltrans roles.

Reviewed by:

Marvin Rose, Director, Public Works
Prepared by Jack Witthaus, Transportation and Traffic Manager

Approved by:

Gary M. Luebbers
City Manager

ATTACHMENT

- A. Cooperative Agreement
- B. Resolution

7-20-2009

04-SCL-101-PM 45.0
04-SCL-280-PM R3.4

**AGREEMENT FOR MAINTENANCE OF
BORREGAS AVENUE BICYCLE/PEDESTRIAN OVERCROSSINGS
IN THE CITY OF SUNNYVALE**

THIS AGREEMENT is made and entered into in duplicate, effective this _____ day of _____, 200__, by and between the State of California, acting by and through its Department of Transportation, hereinafter referred to as "STATE" and the City of Sunnyvale, hereinafter referred to as "CITY", and collectively referred to as "PARTIES."

WITNESSETH:

- A. WHEREAS, on December 1, 2006, Cooperative Agreement No. 4-2074 was executed between CITY and STATE to construct two Bicycle/Pedestrian Overcrossings ("BPOC's") along Borregas Avenue: (1) South Borregas Avenue BPOC at State Route 101 ("SR 101"), and (2) North Borregas Avenue BPOC at State Route 237 ("SR 237"), hereinafter referred to as "PROJECT"; and
- B. WHEREAS, in accordance with Section III, Article 19, of said Agreement, a maintenance agreement shall be executed prior to acceptance of PROJECT by STATE, and CITY will accept control and maintain at its own cost and expense the portions of PROJECT both lying outside and inside the State highway right of way.
- D. WHEREAS, the PARTIES hereto mutually desire to clarify the division of maintenance responsibility, as defined in Section 27 of the California Streets and Highways Code, and their respective responsibilities as to the two BPOC's.

NOW THEREFORE, IT IS AGREED:

- 1. Exhibit A consists of plan drawings that delineate the PROJECT, both within and outside of STATE right of way, which are the responsibility of CITY to maintain in accordance with this Agreement, incorporated herein by reference.
- 2. CITY must obtain the necessary Encroachment Permit from STATE's District 4 Encroachment Permit Office prior to entering areas reserved for exclusive freeway use to perform CITY maintenance responsibilities. This permit will be issued at no cost to CITY.
- 3. BICYCLE/PEDESTRIAN OVERCROSSINGS
(SOUTH BORREGAS AVENUE BPOC AND NORTH BORREGAS AVENUE BPOC)
 - 3.1 CITY, at CITY expense, will maintain the deck surfacing (and shall perform such work as may be necessary to ensure an impervious and/or otherwise suitable surface) and all portions of the structure above the bridge deck. The bridge structural maintenance is provided for in Article 3.2 herein below. The above deck portions include, but are not limited to, steel fence with welded wire mesh railing, tubular handrail, lighting installations, all traffic service facilities

provided for the benefit or control of pedestrian traffic such as guide and regulatory signs, bollards and striping, and debris and graffiti removal.

CITY, at CITY expense, will be responsible for debris and graffiti removal outside of the area reserved for exclusive freeway.

3.2 CITY, at CITY expense, will perform structural maintenance for the entire PROJECT structures from south ramp to north ramp inclusive, including the portions inside STATE right of way.

3.2.1 STATE, at no cost to CITY, will perform bridge inspection required by Federal Code and in accordance with Federal Highway Administration Guidelines. STATE will provide to CITY the inspection results with specified deadlines for maintenance and corrective work. CITY, at CITY's expense will provide the required equipment access for said inspection.

CITY, at CITY's expense, will perform the required structural maintenance and/or corrections, and will not be relieved of the same, in case of a delay or failure of STATE to perform bridge inspection. At the PARTIES' option, structural maintenance may subsequently be contracted as a STATE maintenance service to be paid for by CITY.

3.2.2 In the event that CITY does not contract with STATE for the structural maintenance, CITY shall apply for an encroachment permit from STATE which will stipulate terms of entry by CITY onto STATE's right-of-way for the purpose of performing the structural maintenance commencing from the date of PROJECT completion, and CITY shall re-apply for an encroachment permit from STATE every two (2) years thereafter. An encroachment permit from STATE will also be required for any contractor of CITY, if CITY delegates its maintenance work to any party other than STATE.

3.2.3 In the event that CITY is informed of the need for structural maintenance on the structure but is unable or refuses to perform its obligations under this Agreement, STATE reserves its right to protect the public by performing, at CITY's expense, the structure maintenance

4. LANDSCAPED AREAS ADJACENT TO BICYCLE/PEDESTRIAN CROSSING STRUCTURE

Responsibility for the maintenance of any plantings or other types of roadside development lying outside of the area reserved for exclusive freeway use shall lie with CITY and not with STATE.

5. LEGAL RELATIONS AND RESPONSIBILITIES:

- 6.1 Nothing within this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of a PARTY to the Agreement by imposing any standard of care with respect to the operation and maintenance of STATE highways and local facilities different from the standard of care imposed by law.
- 6.2 Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
- 6.3 Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY, under or in connection with any work, authority or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

6. EFFECTIVE DATE

This Agreement shall be effective upon the date appearing on its face, it being understood and agreed, however, that, except as expressly provided for in this Agreement, execution of this Maintenance Agreement shall not affect any pre-existing obligations of CITY to maintain other designated freeway, highway or road areas pursuant to prior written agreements with STATE.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF SUNNYVALE

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
City Manager

WILL KEMPTON
Director of Transportation

Attest:

City Clerk

By _____
NADER ESHGHIPOUR Date
District 4 - Deputy District Director
Maintenance

Approved as to form:

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AUTHORIZING THE EXECUTION OF A MAINTENANCE AGREEMENT WITH THE STATE OF CALIFORNIA FOR PEDESTRIAN/BICYCLE BRIDGES IN THE AREA OF STATE HIGHWAYS 237 AND 101 IN THE VICINITY OF BORREGAS AVENUE

WHEREAS, the City of Sunnyvale has constructed pedestrian/bicycle bridges in the area of Highways 237 and 101 in the vicinity of Borregas Avenue, which are located within the State right-of-way;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT the City of Sunnyvale hereby approves and authorizes the City Manager to execute the Maintenance Agreement with the State of California relating to maintenance of pedestrian/bicycle bridges in the area of California State Highways 237 and 101 in the vicinity of Borregas Avenue, a copy of which is attached hereto as Exhibit "A".

Adopted by the City Council at a regular meeting held on _____, 2009, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

 City Clerk
 (SEAL)

 Mayor

APPROVED AS TO FORM AND LEGALITY:

 David E. Kahn, City Attorney